

U.S. DEPARTMENT OF EDUCATION

DETERMINATION LETTERS ON STATE IMPLEMENTATION OF IDEA

JUNE 2009

The U.S. Department of Education's Office of Special Education and Rehabilitative Services released State determinations on implementation of the Individuals with Disabilities Education Act (IDEA) for Part B and Part C for fiscal year 2007. The 2004 Amendments to the IDEA require each State to develop a State Performance Plan (SPP) that evaluates the State's efforts to implement the requirements and purposes of the IDEA, and describes how the State will improve its implementation. The Part B SPP includes baseline data, measurable and rigorous targets, and improvement activities for 20 indicators such as graduation rate, dropout rate, participation and performance on assessments, meeting evaluation timelines, and ensuring that complaints and hearings are resolved within required timelines. The Part C SPP includes baseline data, measurable and rigorous targets, and improvement activities for 14 indicators such as ensuring positive outcomes for infants and toddlers with disabilities, timely provision of services, meeting evaluation timelines, and provision of services in natural environments.

The IDEA also requires each State to report annually to the Secretary on its performance under the SPP. Specifically, the State must report in its Annual Performance Report, the progress it has made in meeting the measurable and rigorous targets established in its SPP. The Secretary is required to issue annual determination letters to each State on their progress in meeting the requirements of the statute. The determinations are part of the ongoing efforts to improve education for America's 7 million children with disabilities.

IDEA details four categories for the Secretary's determination. A state's determination may be:

- Meets the requirements and purposes of IDEA;
- Needs assistance in implementing the requirements of IDEA;
- Needs intervention in implementing the requirements of IDEA; or
- Needs substantial intervention in implementing the requirements of IDEA.

IDEA identifies specific technical assistance or enforcement actions for States that are not determined to "meet requirements," that the Department must take under specific circumstances. If a State "needs assistance" for two consecutive years, the Department must take one or more enforcement actions, including among others, requiring the State to receive technical assistance, designating the State as a high-risk grantee, or directing the use of State set-aside funds to the area(s) where the State needs assistance. If a State "needs intervention" for three consecutive years, the Department must require a corrective action plan or compliance agreement, or withhold further payments to the State. Any time a State "needs substantial intervention" the Department must take immediate enforcement action, such as withholding funds or referring the matter to the Department's inspector general or to the Department of Justice.

Following is each State's performance in meeting the requirements of IDEA Part B, which serves students with disabilities, ages 3 through 21:

- **MEETS REQUIREMENTS—**

Alabama, Alaska, Arkansas, Arizona, California, Commonwealth of the Northern Mariana Islands, Connecticut, Hawaii, Idaho, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, North Carolina, North Dakota, New Jersey, Ohio, Oklahoma, Oregon, Republic of Marshall Islands, South Dakota, Utah, Virginia, Washington, Wisconsin and Wyoming

- **NEEDS ASSISTANCE—**

Delaware, Guam, Pennsylvania, Puerto Rico, Texas, Virgin Islands and Vermont

- **NEEDS ASSISTANCE (two consecutive years) —**

American Samoa, Federated States of Micronesia, Florida, Georgia, Illinois, Kentucky, Massachusetts, Maine, Nebraska, New Hampshire, Nevada, New Mexico, New York, Palau, South Carolina, Tennessee and West Virginia

- **NEEDS INTERVENTION—**

Bureau of Indian Education, Louisiana and Rhode Island

- **NEEDS INTERVENTION (three consecutive years)—**

Colorado, District of Columbia and Indiana

Following is a list of each state's performance under IDEA Part C, which serves infants and toddlers birth through age 2:

- **MEETS REQUIREMENTS—**

Alabama, Arkansas, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, Iowa, Idaho, Illinois, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Missouri, Montana, North Carolina, Nebraska, New Hampshire, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, West Virginia and Wisconsin

- **NEEDS ASSISTANCE—**

Alaska, Maine, South Carolina, Tennessee, Texas and Wyoming

- **NEEDS ASSISTANCE (two consecutive years)—**

American Samoa, Arizona, California, Colorado, Florida, Guam, Hawaii, Louisiana, Michigan, Mississippi, New York, North Dakota, Ohio, Puerto Rico, Utah, Virginia, Virgin Islands, Vermont and Washington

- **NEEDS INTERVENTION—**

Georgia, Kentucky, New Mexico and Nevada

- **NEEDS INTERVENTION (three consecutive years)—**

District of Columbia



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN - 1 2009

Honorable Stan Marshburn
Interim Secretary
Department of Social and Health Services
P.O. Box 45010
Olympia, Washington 98504-5014

Dear Interim Secretary Marshburn:

Thank you for the timely submission of Washington's Federal fiscal year (FFY) 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to Washington's APR and SPP received on April 2, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined that, under IDEA sections 616(d) and 642, Washington needs assistance in meeting the requirements of Part C of IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2007 APR and revised SPP, other State-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) and 642 of the IDEA in 2009" for further details.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for Washington is that, for Indicator 9, the State reported 87% compliance with the requirements for timely correcting findings of noncompliance. For this reason, we were unable to determine that Washington met requirements for FFY 2007 under IDEA sections 616(d) and 642. OSEP notes other areas that reflect a high level of performance, which included that Washington reported valid and reliable data for all indicators, high levels of compliance for Indicators 1 (95% for timely service provision), 8A (96% for IFSP transition content), 8B (99% for LEA notification), 10 (100% for timely complaint resolution), and 14 (100% for timely and accurate data reporting), and correction of FFY 2006 findings for Indicators 1, 2 (related requirements for the provision of Part C services in the natural environment), 7 (45-day timeline), 8A, 8B, and 8C (timely transition conferences). We hope that Washington will be able to demonstrate that it meets requirements in its next APR.

The enclosed table provides OSEP's analysis of the State's FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

The State's determination for the FFY 2005 and FFY 2006 APRs was also needs assistance. In accordance with section 616(e)(1) of the IDEA, if a State is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions: (1) advise the State of available sources of technical assistance that may help the State address the areas in

which the State needs assistance; (2) direct the use of State-level funds on the area or areas in which the State needs assistance; or (3) identify the State as a high-risk grantee and impose special conditions on the State's Part C grant award.

Pursuant to these requirements, the Secretary is advising the State of available sources of technical assistance related to Indicator 9, timely correcting findings of noncompliance. A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rrfcnetwork.org/techassistance.html>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, web seminars and other sources of relevant technical assistance for that indicator. For the indicator(s) listed above, your State must report with its FFY 2008 APR submission, due February 1, 2010, on the: (1) technical assistance sources from which the State received assistance, and (2) the actions the State took as a result of that technical assistance.

The extent to which your State takes advantage of available technical assistance for these indicators may affect the actions OSEP takes under sections 616 and 642 should your State not be determined to meet requirements next year. We encourage Washington to take advantage of available sources of technical assistance in other areas as well, particularly if the State is reporting low compliance data for an indicator.

As required by sections 616(e)(7) and 642, the State must notify the public that the Secretary of Education has taken the above enforcement action. This notification must be sufficient to notify the public within the State and may include such mechanisms as posting on the agency's website, distribution through the media and distribution through public agencies.

As you know, your State must report annually to the public on the performance of each early intervention services program (EIS program) located in the State on the targets in the SPP, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642. In addition, your State must review EIS program performance against targets in the State's SPP, determine if each EIS program 'meets requirements,' 'needs assistance,' 'needs intervention,' or 'needs substantial intervention' in implementing Part C of the IDEA, and inform each EIS program of its determination. For further information regarding these requirements, see the SPP/APR Calendar at <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>. Finally, as you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's

noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and

2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/536>.

OSEP is committed to supporting Washington's efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Tammy Proctor, your OSEP State Contact, at 202-245-7333.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator